

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO. 400 of 1981

WITH

SECOND APPEAL NO. 425 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

=====

1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements? -
2. To be referred to the Reporter or not? - :
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? -
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge? : NO  
-

-----  
STATE OF GUJARAT

Versus

ABDUL KADAR ABDUL KARIM  
-----

Appearance:

MR SUDHANSHU S. PATEL for the Petitioner  
MR HM PARIKH FOR MR NS DESAI for Respondent.  
-----

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 27/04/2000

COMMON ORAL JUDGEMENT

1. The property in dispute was purchased by Abdul

Kadar Abdul Karim respondent of Second Appeal No. 400/81 and that property was let out to Abdul Sakun Mohmed respondent of Second Appeal No. 425/81.

2. The suits of both the plaintiffs were decreed by the trial Court and the findings of the trial Court were confirmed by the lower appellate Court. The substantial questions raised in both these appeals are one and the same and hence both these appeals are being disposed of by this common judgment.

3. Abdul Kadar Abdul Karim filed Regular Civil Suit No.114/76 on the assertions that he purchased the suit property from Ismail Habibbhai Majidbhai Adamji, Harun Adamji, Havabhai Adamji and Majidbhai Adamjibhai for a consideration of Rs.6,500/- by the registered sale deed dated 1-7-1974 and since then he has become the owner of that property. Majidbhai Adamji is the holder of power of attorney. The suit property was running in the firm in the name and style of Adam Dada. They required the amount for their business and therefore they have sold the suit property to him after taking the consideration from him. The possession of the property was also handed over to him on registration of the sale deed. Since, then the plaintiff is in possession and doing business in the suit property. Initially that suit property was rented to the seller firm. Later on the suit property was let out to Abdul Sakun Mohmed respondent of Second Appeal No. 425/81. When the property was purchased by the plaintiff the proceedings of assessment of sale tax were going on against the said firm. For Sanvat year 2028 the assessment of sales tax of Rs.4,57,751-29 ps. has been made by the sales tax department against the firm and the said order was passed by the Sales-tax Officer, Enforcement Branch on 31-7-1974. The demand notice was issued on that day against them and the same was served upon them on 13-8-1974. Similarly, for Sanvat Year 2029 the assessment of Rs. 5,45,277-41 ps. for the sale-tax amount has been passed against them and the demand notices were served upon the firm on 13-8-1974. Thus, in all Rs. 10,03,029-30 ps. were dues from the said firm and its partners. Out of that amount of sales tax the Sales-tax Department could only recover the amount of Rs.13,305-24 and the amount of 9,89,723-96 ps. has become due from the said firm and its partners. As such, the firm and its partners were liable to pay the said due amount to the Sales-tax Department before 1-7-1974 for the year 1973. The proceedings for the assessment of the sales tax were going on against the said firm and its partners and the notices of hearing of those proceedings were served upon them and they used to

remain present on the adjournment dates given to them for hearing.

4. The defendant no. 1 Circle Officer, Recovery, Sales-tax Department sent the notice dated 21-1-1975 restraining the plaintiff from transferring the suit property by way of sale, gift or in any other means. As the plaintiff has already purchased the suit property and he is the owner of that property, the seller of that property had no right or interest in the suit property. The property was not liable to be attached for the dues of sales-tax amount of the said firm. In spite of the said fact, the defendant no. 1 in order to harass the plaintiff had attached the suit property knowing the fact that the property has already been purchased by the plaintiff by the registered sale deed. The defendant no.1 proceeded in order to sell the suit property by public auction and he fixed the date 5-8-1975 for proclamation of public auction. Hence, he filed Regular Civil Suit No. 13/75 for permanent injunction restraining the defendant from selling the suit property in public auction. But due to some technical ground he had to withdraw that suit on the condition to file a fresh suit against the defendants and the permission was granted to him. Then the present suit was filed. According to the plaintiff, he was not knowing that the huge amount of sales tax was due from the seller of the suit property or any proceedings in that respect was going on against them. Due to financial shortage in their business, the seller was required the amount to utilize it in their business. For that purpose, they sold the property to him. Hence, the transaction was bonafide for the consideration. The Sales-tax Department had no right to attach the suit property of the plaintiff and hence the sale deed was not void or illegal as assessment were going on for the sale tax.

5. The trial Court framed the following 11 issues.

- (i) Whether the plaintiff proves that he purchased the suit property described in para 2 of the plaint from Ismail Habib, Majid Adamji, Harun Adamji, Havabhai Adamji and Ashraf Ismail for Rs.6,500/- by a registered sale deed dated 1-7-74 ?
- (ii) Whether the plaintiff proves that he is a bonafide purchase for value without notice ?
- (iii) Whether the plaintiff proves that the suit properties are not liable to be attached and sold

for recovery of the dues of the sales-tax department from the vendors ?

(iv) Whether the defendants prove that the document dated 1-7-1974 in favour of the plaintiff is nominal, sham and is not for adequate consideration ?

(v) Is it proved that the vendors have executed this bogus and fictitious document in favour of the plaintiff, who is their relative, with a view to defraud the creditors and with a view to delay or defeat the recovery dues of the Government ?

(vi) Whether the suit is barred by the provisions of Bombay Revenue Jurisdiction Act ?

(vii) Whether the suit is barred by the provisions of Section 64 of the Sales-tax Act ?

Remaining issues are not relevant.

6. The trial Court after going through the entire evidence on record in respect of the issues no. 1 to 5, came to the conclusion that the plaintiff has purchased the suit property from the said firm and its partners for Rs.6,500/- by the registered sale deed dated 1-7-1974 and the plaintiff is a bonafide purchaser for the value without notice and the suit property was not liable to be attached and sold for recovery of dues of sales tax from the vendors. The trial Court also came to the conclusion that the defendants had failed to prove that the sale deed dated 1-7-1974 executed in favour of the plaintiff is nominal and is not for adequate consideration. The defendants also could not prove that the vendors had executed bogus and fictitious documents in favour of the plaintiff with a view to defeat the creditors and to delay or defeat the recovery dues of the Government. The trial Court also recorded the findings that the suit was not barred by the provisions of the Bombay Revenue Jurisdiction Act. It is also held by the trial Court that the provisions of Section 64 of the Sales-tax Act were not applicable to the facts and circumstances of the present case. The State Government along with the Circle Officer, filed Regular Civil Appeal No. 84/79 before the District Court and the District Court dismissed the appeal by the judgment and order dated 14-7-1981 confirming the findings recorded by the trial Court and therefore both these appeals have been filed before this Court and the substantial question in both these appeals are, as under :

(i) Whether the lower Courts were right in law in coming to the conclusion that the suit of the plaintiff is not barred u/s 11 of the Bombay Land Jurisdiction Act ?

(ii) Whether the lower Court was right in law in coming to the conclusion that the suit of the plaintiff is not barred u/s 64 of the Gujarat Sales Act ?

(iii) Whether the Circle Officer, Sales Tax (Recovery) is a Revenue Officer within the meaning of Section 3 of the Bombay Land Revenue Code ?

7. Heard the learned counsel for the parties. The learned counsel for the appellant submitted that it is admitted by the respondents that he is son of maternal uncle of Ismail Habib one of the partners of the firm. The purchaser being relative of one of the partners was in the knowledge of pendency of the sales-tax recovery proceedings and was fully knowing that the huge amount of sales-tax was to be paid and in order to avoid payment of outstanding sales-tax the firm sold the suit property to near relative of one of the partners for meagre amount which is not adequate valuable consideration which is worth of Rs.35,000/- though the market value of the suit property was Rs.60,000/- to Rs.70,000/-. After purchase, the suit property was let out to the firm itself. As such the sale transaction is malafide, sham and not for a valuable adequate consideration. He referred to Section 73 of the Guajrat Sales Tax Act, which reads as under :

"Where during the pendency of any proceedings under this Act, any dealer liable to pay tax creates a charge on, or parts with the possession by way of sales, mortgage, exchange or any other mode of transfer whatsoever of any of his property in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the dealer as a result of the completion of the said proceedings:

Provided that such charge or transfer shall not be void if made for valuable consideration and without notice of such proceedings."

8. In this respect, the learned counsel for the

appellant submitted that the market value of the suit property is Rs.60,000/- to Rs.70,000/-. The upset price of the property was Rs.35,000/- and it was sold to the plaintiff only for Rs.6,500/-. As such, the sale transaction was not for valuable consideration or it can be said that it was sold for inadequate consideration. As such, the transfer or transfer was void. If the transfer was void, then the appellants were right in attaching the suit property and placing the same in public auction. The Courts below have committed error in holding otherwise. In this respect, the lower appellate Court has observed that proviso to Section 73 of the Gujarat Sales-tax Act, does not speak about either the adequacy or inadequacy of the price of the property. It speaks about the valuable consideration only. The other requirement of the proviso of the said section is that the purchaser must not have any notice of any proceeding going on against the dealer by the sale tax department and who is liable to pay the due amount of the sales tax assessed by the Sales Tax Department. In the present case, the plaintiff has admitted that he had no knowledge about the proceedings going on against the partners of New Oil Mills. Nanabhai has stated in his evidence that the plaintiff is the son of maternal uncle of Ismail Habibbhai who is one of the partners of the firm. In cross-examination, Nanalal has stated that it is true that the valuable property has been sold to his near relative for meagre amount in order to sink the sales tax dues of the Government. He has also admitted that the plaintiff is residing at Bombay since last many years. He has also admitted that he has got documentary evidence to show that the plaintiff was knowing about the transaction of the firm on account of relationship with Ismail Habibbhai partner of the firm. The lower Appellate Court has made observation that the defendants have failed to prove that the plaintiff had any knowledge about the proceedings going on against the partners of the firm in respect of the sales tax dues. As such, the plaintiff is a bonafide purchaser for valuable consideration without notice. This witness has stated that he has never purchased or sold any property and he had not got inquired about the market price of the surrounding properties of the suit property of the suit property. The lower appellate Court was of the view that the defendants raised plea regarding the valuation of the property but failed to prove that the market price of the property was Rs.60,000/- to Rs.70,000/-, as alleged. So far the substantial question of law raised by the appellants regarding jurisdiction u/s 11 of the Bombay Land Jurisdiction Act and so far as Section 64 of the Gujarat Sales Tax Act, are concerned, they are related to

the assessee and they have no concern with regard to the purchase of any property u/s 11 of the Bombay Revenue Jurisdiction Act, which reads as under :

"No Civil Court shall entertain any suit against the Government on account of any act or omission of any Revenue Officer unless the plaintiff first proves that previously to bringing his suits he has presented all such appeals allowed by the law for the time being in force, as within the period of limitation allowed for bringing such suits it was possible to present."

9. It appears that under proviso to Section 11 of the Bombay Land Revenue Jurisdiction Act, if any person wants to file any suit regarding assessment of sales tax he will have to file all the appeals provided under the law. Unless he exhausts all the appellate jurisdiction within the limitation, he will not be allowed to file suit for declaration that the assessment of tax was illegal. Thus, the provisions of Section 11 of the Bombay Land Revenue Jurisdiction Act relate to the assessee and not other persons who have no concern with assessment.

10. Section 64 of the Gujarat Sales Tax Act, reads as under :

"Save as provided by section 69 no assessment made and no order passed under this Act the rules made thereunder by the Commissioner or any Officer, appointed to assist him shall be called in question in any court and save as is provided by section 65 and 67 no appeal or application for revision shall lie against any such assessment or order."

11. Thus, the provisions of Section 64 of the Gujarat Sales Tax Act have no concern with the plaintiff as the plaintiff is not an assessee of the sale tax amount. As such, the provisions of Section 64 of the Gujarat Sales Tax Act are not attracted in this case. Even if it is assumed that the Circle Officer, Sales Tax. (Recovery) is a Revenue Officer within the meaning of Section 3 of the Bombay Land Revenue Code, as raised in third substantial question of law, that makes no difference at all regarding the proceedings for recovery of the sales tax initiated by the plaintiff and for permanent injunction restraining the appellants from attaching and placing the disputed property under public auction.

12. As such, after going through the material on

record and hearing the parties, I come to a conclusion that both these appeals do not involve any substantial question of law as raised by the appellants in the appeals and therefore both these appeals are liable to be dismissed. Accordingly, both these appeals are dismissed.

-0-0-0-0-0-

/JVSatwara/